

STARTLEY GENERAL)
CONTRACTORS, INC., *et al.*,)
))
Plaintiffs,)
))
v.) **Case No. 2:18-cv-00543-MHH**
))
THE WATER WORKS BOARD)
OF THE CITY OF)
BIRMINGHAM, *et al.*,)
))
Defendants.)
))

**DEFENDANTS' JOINT MOTION TO DISMISS CLAIMS ASSERTED BY
PLAINTIFFS ON BEHALF OF THE UNITED STATES**

Defendants, The Water Works Board of the City of Birmingham (“BWVB”); its Directors William Burbage, Jr., Deborah Clark, Brenda J. Dickerson, Tommy Joe Alexander, Ronald A. Mims, Brett A. King, Sherry W. Lewis, George Munchus, and William R. Muhammad; BWVB employees and former employees Mac Underwood, T.M. “Sonny” Jones, Jerry Lee Lowe, Richard Wayne Newton, and Derrick Maye; Jones Utility & Contracting Company, Inc.; and Richard “Ricky” Jones jointly move to dismiss Counts I-IV of plaintiffs’ Second Amended Complaint [“SAC,” Doc. 58] pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) for its failure to state any cognizable claim under the False Claims Act, 31 U.S.C. § 3729 or on behalf of the United States under the common law of fraud.

Defendants' Joint Motion to Dismiss is made on the following bases:

1. Counts I-III of the SAC fail to plead any facts supporting a false claim that caused a loss to the United States, and therefore fail to satisfy the requirements of Rules 8(a) and 9(b).
2. Count IV of the SAC fails to plead any cognizable claim for relief under Rule 8 and 9(b).
3. The SAC is an impermissible "shotgun" pleading that fails to meet the pleading requirements of Rule 8(a)(2).
4. Plaintiffs have failed to plead the conditions precedent to bringing an FCA claim as required by Rule 9(c).
5. Plaintiffs have failed to plead their standing and capacity to sue on behalf of the United States as required by Rule 9(a)(1)(A) and (B).
6. Plaintiffs have failed to plead the time and place of any alleged false claim made to the United States as required by Rule 9(f).
7. Because plaintiffs cannot plead any facts demonstrating a case or controversy under the False Claims Act, this Court lacks jurisdiction over this matter, and it must be dismissed with prejudice pursuant to Rule 12(b)(1).

As the Court has already recognized, "it is not enough to allege that BWWB receives DWSRF funds for water projects. The plaintiffs must allege that BWWB funded the projects for which Jones Utility purportedly submitted improperly

inflated invoices with DWSRF loan proceeds.” [Order, Doc. 55, p. 9 n. 5.] The plaintiffs’ allegations in the SAC still fail to “identify BWWB projects funded with DWSRF loans for which Jones Utility purportedly submitted fraudulent invoices or otherwise violated the FCA.” [*Id.* at 8.] The Court should again dismiss Plaintiffs’ causes of action under the False Claims Act. Plaintiffs’ latest pleading attempt confirms the Court’s prior opinion that any further “amendment of the federal claims ... would be futile,” and therefore Plaintiffs’ claims should now be dismissed *with prejudice*. [Doc. 53, p. 2 n. 2].

Respectfully submitted,

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***With express permission.**

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, the foregoing Defendants' Joint Motion to Dismiss Claims Asserted by Plaintiffs on Behalf of the United States was electronically filed with the Clerk of Court using the CM/ECF system which is supposed to send electronic notification to the following counsel of record:

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